

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION*

WRIT PETITION NO.2551 OF 2016

Satish Namdeo Waghchoure & Anr. .. Petitioners
Vs
Anita Sudhakar More @ Anita Satish Waghchore .. Respondent

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Mr. Sunilkumar J. Kanojia for the Petitioners.
Mr. Bharat Khanna for the Respondent No.1.
Ms. Rajeshree Gadhvi, APP for the Respondent No.2.

***CORAM : A. S. OKA &
ANUJA PRABHUDESSAI, JJ.***

DATE : 23 JANUARY, 2017.

P.C. :

1. Rule.
2. The learned APP waives service for the 2nd Respondent. The learned counsel appearing for the 1st Respondent waives service. Forthwith taken up for final disposal.
3. The prayer in this petition under Article 226 of the Constitution of India is for quashing the judgment and order dated 20th

January 2015 passed by the learned Metropolitan Magistrate 49th Court at Vikhroli, Mumbai by which the present Petitioners have been convicted for the offences punishable under Section 498 A read with Section 34 of the Indian Penal Code. An Appeal against conviction has been preferred by the present Petitioners being Criminal Appeal No. 151 of 2013 before the Sessions Court. Consent terms were filed in the said Appeal on 7th May 2015. The present petition is filed on the basis of the said consent terms for quashing the conviction of the present Petitioners.

4. We have perused the consent terms a copy of which is annexed on page 40 of this petition. The 1st Petitioner and 1st Respondent were husband and wife. The learned counsel appearing for the Petitioners and the 2nd Respondent stated that the consent terms have been signed by the Petitioners as well as the 1st Respondent. There is an affidavit filed by the 1st Respondent dated 16th January 2016. In paragraph 4 of the affidavit, she has admitted that the consent terms have been signed by her.

5. The consent terms record that all the original documents of the 1st Respondent shall be handed over by the 1st Petitioner. It is recorded that their son will continue to have right in the ancestral property and in any other property of the 1st Petitioner and that the 1st Petitioner agreed to

incorporate the name of the minor son in the 7/12 extracts of the ancestral property.

6. Our attention is invited to the judgment and decree passed by the learned Judge of the Family Court at Mumbai in Matrimonial Petition on 1st August 2001 by which the marriage solemnized between the 1st Petitioner and the 1st Respondent has been dissolved by a decree of divorce. In fact, decree of divorce has been passed in the petition filed by the 1st Petitioner on the ground of cruelty. It is not in dispute that the said decree has been accepted by both the parties and has become final.

7. In the case of *Abasaheb Yadav Honmane Vs. State of Maharashtra*¹, a full bench of this Court considered the question whether the power under Section 482 can be exercised for quashing the Criminal Proceedings on the ground of settlement during the pendency of an Appeal against an order of conviction. The full bench held that power to quash the Criminal Proceedings can be exercised even in Appeal against an order of conviction depending upon facts of each case.

8. Coming back to the facts of the case in hand, in the year 2001, there is a decree of divorce passed by the Family Court on the

¹ 2008 (2) MH.L.J

ground of cruelty in a petition filed by the 1st Petitioner husband. The First Information Report was registered at the instance of the 1st Respondent in the year 2000 in which allegations of cruelty were made for the period between 10th August 1998 to 20th January 2000. The subsequent decree for divorce has been accepted by the 1st Respondent. Moreover all other issues concerning the matrimonial dispute as well as rights of minor son have been taken care of in the consent terms filed in the Criminal Appeal 121 of 2015. Thus, the marriage solemnized between the 1st Petitioner and 1st Respondent has come to an end more than 15 years back and that also on the basis of a decree passed on the basis of the allegations of cruelty made by the 1st Petitioner against the 1st Respondent. Now there appears to be a complete settlement of all the subsisting disputes between the 1st Petitioner and the 1st Respondent.

9. The prosecution of the Petitioners was the result of the matrimonial dispute between the 1st Petitioner and the 1st Respondent. It is an accepted position that the 1st Petitioner has paid a sum of Rs. 6,00,000/- to the 1st Respondent by a demand draft. The draft has been cashed by the 1st Respondent. We are satisfied that now there is a complete settlement of the matrimonial dispute. Therefore, it is now unjust to punish the Petitioners in a prosecution which was a result of the

matrimonial dispute. In our view, this is a fit case to exercise powers of this Court under Section 482 of the Code of Criminal Procedure, 1973 by quashing the conviction of the present Petitioners.

10. Accordingly, the Petition succeeds and we pass the following order:-

O R D E R

- i) We accept the statement made by the 1st Petitioner and the 2nd Respondent that they will abide by the consent terms dated 7th May 2016 filed in Criminal Appeal No. 121 of 2015 in Sessions Court at Mumbai;
- ii) The judgment and order dated 20th January 2015, passed by the learned Metropolitan Magistrate 49th Court, Vikhroli, Mumbai, in Criminal Case No. 607/P/2000 is hereby quashed and set aside;
- iii) The Petitioners are acquitted the offences punishable Under Section 498-A read with Section 34 of the Indian Penal Code;
- iv) The bail bonds of the Petitioners stand canceled;

- v) The Criminal Appeal No.121 of 2015 pending before the Sessions Court stands disposed of;
- vi) Rule is made absolute in the above terms.

(ANUJA PRABHUDESSAI,J)

(A. S. OKA, J.)